BEFORE THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE.

Review Application No. 5 of 1905-06.

Petitioner.—S. Shatagopa Iyengar, retired Head-quarter Inspector of Police, Bangalore.

Subject.

Prayer for the removal of the direction contained in Government Order No. 1606—P. F. 19-99, dated the 22nd February 1902, that the restoration to the petitioner of the Dharmadaya Inam land, Survey No. 84 of the Kogile village in the Bangalore Taluk, is subject to the condition that the deficient number of trees (111) on the Bangalore-Madras road is made good within the next six months.

Decision.

This is an application for a review of the Order of Government No. 1606-7—P. F. 19-99, dated the 22nd February 1902. The petitioner objects to the direction therein contained that the restoration of the Inam land in question to him is subject to "the condition that the deficient number of trees (111) is made good within the next six months." His contention is that under the terms of the Commissioner's Notification, dated 22nd July 1846, and of the order of 6th September 1865 granting the Inam, his obligation does not extend to a larger number of trees than 400. Government hold that this contention is entitled to prevail. The Notification of 1846 entitled the petitioner's father to an Inam of 12 pagodas for every 200 trees planted by him. He had planted 533 trees but the Deputy Superintendent recommended the grant to him of land assessed at only twenty-four pagodas "for 533 (trees) minus 133." This was sanctioned by the Chief Commissioner. The question is, not how many trees the grantee had actually planted but how many he was bound to plant and maintain. The latter was 400 and this number did, as a matter of fact, exist at the time of the Inam Settlement. The demand for an additional 111 trees so as to make up the 533, which existed at the time of the grant, was not justified by the Rules and could not consequently be properly enforced. This circumstance was lost sight of by Government when they authorized the restoration of the resumed Inam subject to the condition complained of. That condition is now removed and the order made absolute. The Deputy Commissioner's report shows that as many as 588 mature trees and thirty-seven plants are at present maintained by the petitioner. The petitioner's object then is clear that he is simply anxious that an additional obligation not in accordance with the terms of the grant should not attach to him and his descendants permanently for all time to come.

2. The grant was made up of eight kandis of land situate at Dyavasandra and four kandis at Kogile. The petitioner continues entitled to the whole of this extent. Under the Rules of 1874, some excess found in the lands of both villages was removed from his holding and otherwise disposed of. On the strength, however, of the subsequent Rules of 1891 as explained in Proceedings Nos. 2872-81—Cir. 28 and 16246-55—R. F. 295-92, dated the 19th May 1892 and 24th March 1893 respectively, certain other land was allotted to the petitioner under Proceedings No. 5130-2—R. F. 295-9, dated the 3rd December 1895, in lieu of the excess taken away from him in the Dyavasandra village. A similar treatment is now asked for by the petitioner and recommended by the Deputy Commissioner, in regard to the excess (Survey No. 82) in the village of Kogile. If under the Rules of 1891 and the explanatory orders of 1892 and 1893 the petitioner is entitled either to the grant of fresh land or to any other suitable relief, the Deputy Commissioner should submit definite proposals for the orders of Government in the Revenue Department.

Memo No. R. 9450—R. M. 455-04-5, dated 11th January 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Bangalore District, together with the records received with his letter No. S. 251, dated the 11th September 1905, for needful reference and resubmission with the report called for.

Appeal No. 32 of 1905-06.

Appellant	*Vs.*	*Respondent*
Sreenivasiengar		1. Lingegowda (dead) 2. Ameer Sab.

Subject.

Appeal against the Mysore Deputy Commissioner's order cancelling the sale for arrears of revenue of Survey No. 71 of Lakshampur village, Akkihebbal hobli of the Krishnarajpete Taluk.

The facts of the case appear sufficiently from the following:—

Decision.

The land in question stood registered in the name of one Lingegowda. A default in the payment of its assessment having occurred, a notice of demand was issued on the 10th of March 1903. The Khatedar was reported to be dead. The notice was served on the person said to be in possession, namely the 2nd respondent Ameer Sab, who, however, repudiated his liability on the ground that he had sold off the occupancy to one Chowrabi. But the latter's tenant and

representative, Gaffur Saib, declined to meet the demand on the ground that the land was still in the enjoyment of 2nd respondent Ameer Sab. The endorsement made to this effect bears *inter alia* the attestation of "Khatedar Linga." As the arrear remained undischarged, the land was forfeited and ordered to be sold. The sale took place on the 21st November 1903, with the result that the appellant became the purchaser. The sale was duly confirmed on the 25th April 1904 and possession given to the appellant on the 26th August 1904. In the meantime, *i. e.*, several months subsequent to the date of the sale, the patel received the arrears from the 2nd respondent in two instalments on the 13th March 1904 and 12th April 1904, respectively. On the representation of the 2nd respondent made on the 5th August 1904, the Deputy Commissioner set aside the sale on the 12th December 1904. Hence this appeal.

2. Government are clearly of opinion that there were no sufficient grounds to justify the cancelment of the sale. The Deputy Commissioner's order is based on certain irregularities which were either non-existent or immaterial. There can be no doubt that though not entitled to a notice, the 2nd respondent did receive one long before the date of forfeiture and sale. He then contested his liability by alleging a sale in favor of a third party. His subsequent action was a complete reputation of that contention. His explanation that he declined to pay under the impression that the demand related to some other land which he had conveyed to Chowrabi, cannot be accepted as satisfactory and must be rejected as an afterthought. Having been given an opportunity of satisfying the demand and deliberately and under a false pretext failed to avail himself of it, it was not afterwards opened to him to turn round and assert that he was entitled to have the sale cancelled inasmuch as the patel had received the arrear from him shortly before the date of confirmation of the sale. The patel knew that the sale had been held in November 1903. The receipt of payment by him from the 2nd respondent partly in March and partly in April following, was a wholly unauthorized proceeding which could not be relied upon as helping the 2nd respondent's case in any way. The objections taken to the sale were none of them worth serious consideration. The khist payable in February 1903 fell into arrears and the notice was issued in March 1903. The non-mention of the year after the month of default was too trifling an omission to merit any serious notice. The same remark applies to the omission of the date of service and the enjoyer's name in the patel's endorsement under the notice. The person "Khatedar Lingegowda" whose attestation appears under Gaffur Saheb's statement was presumably the deceased defaulting occupant's son and namesake. The genuineness of the statement is not disputed, and an unimportant and inadvertant misdescription of one of the attesting witnesses does not in any way affect the validity of the proceedings connected with the sale, when the 2nd respondent was not entitled to a notice of demand, much less was he entitled to have the sale proclamation served on him. The land being situate in a bechirakh village and the first sale having proved infructuous for want of bidders, the second sale impugned by the 2nd respondent was held in a populated village only a furlong or two from the first mentioned village. This surely was not so grave an irregularity as to warrant the cancelment of the sale. It is not seriously contended that there was a paucity of bidders in consequence of this change of *venue*. No importance deserves to be attached to the objection that the record makes no mention of the hours of the commencement and close of the sale. These observations dispose of nearly all the points urged in support of the Deputy Commissioner's order. There remains to be dealt with the single argument that the price realised at the sale was inadequate. This *per se* does not justify any interference with a sale held in accordance with law and long since confirmed and given effect to. In short, the sale was a perfectly valid transaction and the 2nd respondent has himself to thank for the loss of a land in which he seems to have had some interest which he could easily have protected if he had been so minded. His conduct disentitles him to any treatment of the kind shown to him by the Deputy Commissioner on grounds both insufficient and inadmissible.

3. Under these circumstances, the Deputy Commissioner's order will be reversed, and that of the Assistant Commissioner reaffirmed and restored.

Memo No. R. 9559—R. M. 766-04-4, dated Bangalore, the 13th January 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Mysore District, together with the records received with his letter No. 337, dated the 19th September 1905.

Appeal No. 41 of 1905-06.

Appellant	*vs.*	*Respondent*
Tirumalachar, (son of Alasingrachar) of Kaggere village, Kunigal Taluk.		Narayana Rao.

Subject.

Appeal gainst the order of the Deputy Commissioner of the Tumkur District, cancelling the sale held for the arrears of revenue of Survey No. 3—2 of Nademavinapura Anehanta, Kunigal Taluk.

The facts of the case appear sufficiently from the following:—

Decision.

The land in question stood registered in the name of one Alasingrachar. A default having occurred in the payment of the assessment due thereon the land was forfeited and brought

to sale after due notice to the defaulting occupant. Before the date of sale, however, the Taluk authorities ascertained, with reference to previous correspondence, that the respondent was interested in the continuance of the occupancy. They accordingly sent him a copy of the order of forfeiture and of the notification of sale. Before these could be returned, however, a sale was held with the result that the defaulter's son, the appellant, became the purchaser. Within a few days after the sale and long before action could be taken in regard to its confirmation, the respondent appeared before the Amildar and paid up the full amount of the arrears due. The Amildar was of opinion that the sale had been brought about by a fraud on the part of the defaulter and his son, and that the respondent had a valid grievance. The Deputy Commissioner accepted this opinion and refused to confirm the sale. Hence this appeal.

2. Admittedly the respondent had paid the kandayam of certain previous years. He had also, in May 1904, applied to have his name entered in the register maintained for the purpose under Rule 40 of the Rules under the Land Revenue Code (*vide* application produced before Government by the respondent). That application though duly stamped with the Court-fee of one rupee, was returned on the ground that it had not been accompanied by a fee of one rupee in cash. Whether this was correct or not, it is clear that the Taluk authorities knew that the respondent had an interest in the land and had paid its assessment in previous years. It was for this reason that they sent him certain processes. Having done so, they should have waited until the return of those processes, duly served. The sale was a suspicious transaction. It was not confirmed and given effect to. The appellant has no valid complaint. Government see no reason to interfere with the Deputy Commissioner's order appealed from.

3. Under these circumstances, Government direct that the appeal be rejected.

Memo No. R. 9482—R. M. 111-05-6, dated Bangalore, 12th January 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Tumkur District, together with the records received with his letter No. 376, dated the 9th October 1905.

Appeal No. 54 of 1906.

Appellant	*Vs.*	*Respondent*
Neelakantaiya (is dead) son Yellappaiya.		Gali Hanumantaiya.

Subject.

Claim in respect of vacant Government land No. 149 of Kasba Kolar.

The facts of the case appear sufficiently from the following :—

Decision.

A piece of land belonging to the appellant was acquired in 1895 by payment of compensation and added on to the bed of the Kolar Amanikere tank. In 1903, the respondent applied for a portion of it on the ground that it was not actually within the water-spread of the tank. This allegation was on inspection ascertained to be a fact. There was thus nothing to prevent the land being duly assessed and granted for cultivation. In exercise of the discretion vested in him by Rule 41 of the Land Revenue Rules, the Deputy Commissioner granted the occupancy to the Respondent on payment of a price fixed by him. The appellant subsequently asked that the land be given to himself in preference to the respondent. This the Deputy Commissioner declined to do. Hence this appeal. Government are not prepared to hold that the Deputy Commissioner exercised his discretion so unjudiciously and arbitrarily as to call for their interference. The grant has already been given effect to. The appellant has no claim properly called. The Deputy Commissioner might have given him the first refusal or ordered a public sale, but he was not bound to do so. Government are not satisfied that sufficient grounds exist for the cancellation of a grant formally made and duly effectuated.

The appeal fails and is accordingly rejected.

Memo No. R. 9385—R. M. 232-05-2, dated Bangalore, 11th January 1906.

Copy of the above is forwarded to the Deputy Commissioner of the Kolar District, together with the records received with his letter No. 525-42, dated the 21st July 1905, to the address of the Revenue Commissioner.

B. K. VENKATA VARADA IYENGAR,
Secy. to Govt., Gen. & Rev. Dept.

Proceedings of the Government of His Highness the Maharaja of Mysore.

READ—

(1) Letter No. 283, dated the 11th September 1905, from the District Magistrate of Hassan, to the Secretary to the Government of His Highness the Maharaja of Mysore, General and Revenue Department:—

"1. I have the honor to state that on the night of the 3rd April 1905, Mr. A R. Park of Batchanhalla estate, President of the Mysore Game and Fish Preservation Association in Manjarabad Taluk of this district, furnished information to the Hanbal Police Station that some persons were illegally fishing at the junction of the Waddanhalla stream near Handigoanahalli estate of the same taluk. Constable Dasi of the Hanbal Police Station at once proceeded to the spot and seized a creel, a woman's cloth and some fish and brought the same to the Police Station along with the accused persons, Krishne Gowda and four others. On the following day Police dafadar Shek Davood, who had by that time returned to the Police Station, went to the Waddanhalla stream, saw that two dams had been constructed across in the stream in the water of which he found some powdered root of "*Arakalberu*" presumed to be a poisonous substance which he secured and drew up a Mahazar regarding these particulars. The said dafadar after completing the investigation of the case lodged a formal complaint against the abovenamed accused persons before the Amildar and 2nd Class Magistrate of Manjarabad Taluk, charging them for contravention of Rule 4 of the Rules framed under the Mysore Game and Fish Preservation Regulation, II of 1901, being an offence punishable under Section 8 of the said Regulation.

2. The Amildar-Magistrate after examining the witnesses for the prosecution and after record of the statements of the accused 1 to 4, acquitted all of them under Section 245, Criminal Procedure Code, being of opinion that the acts of the accused did not constitute any contravention of the Rules framed under the Regulation.

3. It is apparent from the statements of the accused persons 1 to 3 that they admitted that on the night of the 3rd April 1905 they went to the Waddanhalla stream for the purpose of fishing, that the woman's cloth and the creel found in the river and seized by the Police belonged to the 3rd accused Subbegowda, that they had tied the woman's cloth across the stream and had fixed the creel in the river and that there were some ten or twelve fish in the creel. In the face of the prosecution evidence and such admissions of the accused 1 to 3, the Amildar-Magistrate concluded (1) that the action of the accused did not constitute any offence since the stream flowed from west to east joining the Hemavati River which ultimately joins the river Cauvery, (2) that the offence was not committed during the "close season;" (3) that fishing was not prohibited in the said Waddanhalla stream; and (4) that the flaked root called "Arakalberu" was not proved by any evidence of the prosecution to be a poisonous substance or that it was put into the water of the halla by the accused persons.

4. I may here point out that the basis of the prosecution was not that the accused persons were fishing during "close season" but that they were fishing by prohibited or illegal means. Hence the Amildar-Magistrate's findings on the 1st, 2nd and 3rd points were quite irrelevant to the case.

5. Although the Amildar-Magistrate held that the flakes of the root called "Arakalberu" were not proved by the prosecution to be poisonous substance to constitute a contravention of Rule 4, still he entirely overlooked the provision contained in the same Rule 4 framed under the Regulation, forbidding the capture or destruction of fish in any stream by "the setting of fixed engines," in which expression the construction of dams across the stream, tying of the woman's cloth across the stream, and fixing the creel against it so as to present its mouth to the current of the stream and thus to catch fish in it, must be presumed to be included. If so, whether such means of fishing be employed during "close season" or not, is quite immaterial and would equally amount to a contravention of Rule 4 punishable under Section 8 of the Regulation. The prosecution evidence and the admissions of the accused 1 to 3 clearly proved such contravention against them and the purport of the Police dafadar's written complaint presented to the Magistrate and his sworn statement thereon clearly included such contravention of Rule 4 which was particularly quoted by him in the written complaint.

6. From the foregoing it is apparent that the Amildar-Magistrate's finding that the accused persons had not committed any contravention of Rule 4 punishable under Section 8 of the Regulation, resulting in his order of acquittal of the accused persons under Section 245, Criminal Procedure Code, and return of the creel and the cloth to the 3rd accused, was illegal and arose out of a mistake or evasion of law.

7. Accordingly I made a reference to the Chief Court on the above facts under provision of Section 439, Criminal Procedure Code, submitting the entire records of the Case No. 98 of 1904-05 on the file of the Amildar and 2nd Class Magistrate of Manjarabad Taluk for orders, whereupon the Chief Judge in Criminal Revision Case No. 10 of 1905-06 on the file of the Chief Court of Mysore, passed the following order:—"The attention of the District Magistrate is drawn to the provisions of Sections 439 (5) and 417, Criminal Procedure Code. The remedy sought should be by way of appeal by Government, not by way of review."

8. I may point out that owing to the forested and very intersected nature of the malnad tracts of Manjarabad Taluk and as the villages in those parts are few and far between, the chances of detection of such illegal fishing by the villagers are very few, as the difficulty

of watching such extensive areas of intersected and unfrequented country is very great. And when a *prima facie* case had been made out against the accused persons both by the evidence of the prosecution witnesses and the admissions of the accused persons themselves, the effect of an acquittal of the accused persons by the Magistrate is calculated not only to embolden them to recklessly commit similar offences in future and thus defy the authority of law itself, but also to have no deterrent effect against other persons similarly disposed to commit such offences.

9. Hence it appears obvious to me that there has been a clear miscarriage of justice by an improper acquittal in this case which is one of sufficient importance calculated to affect subsequent prosecution in cases of this nature, as may be seen from a copy of the letter of the Honorary Secretary of the Mysore Game and Fish Preservation Association herewith forwarded.

10. In accordance with instructions conveyed in Government Proceedings No. J. 3354-63—C. 162-2, dated 22nd May 1905, calling attention to para 2 of the previous Government Proceedings No. Camp 2391-400, dated the 25th January 1888, I made a reference to the Government Advocate at Bangalore to favor me with his opinion as to the fitness of moving Government to sanction an appeal against the order of acquittal being preferred in this case to the Chief Court of Mysore under provision of Section 417, Criminal Procedure Code.

11. I herein enclose a copy of letter No. 46, dated 9th September 1905, this day received in reply from the Government Advocate, from which it may be seen that he is of opinion that the case is a fit one for appeal.

12. I therefore request that you will be so good as to obtain sanction of Government to instruct the Government Advocate to prefer an appeal to the Chief Court of Mysore under provision of Section 417, Criminal Procedure Code, against the order of acquittal of the accused persons under Section 245, Criminal Procedure Code, passed by the Amildar and 2nd Class Magistrate of Manjarabad Taluk.

13. The entire records of Criminal Case No. 98 of 1904-05 on the file of the Amildar and 2nd Class Magistrate of Manjarabad Taluk, together with a certified copy of his judgment, dated 31st May 1905, referred to in the concluding paragraph of the Government Advocate's letter No. 46, dated the 9th instant, are also herewith submitted for favor of forwardal to the Government Advocate, should Government accord sanction to preferring the appeal to the Chief Court of Mysore."

(2) Government Proceedings No. J. 988-9—C. 91-2, dated the 30th September 1905, instructing the Government Advocate to prefer an appeal to the Chief Court against the order of acquittal of the accused persons, passed by the Amildar-Magistrate of the Manjarabad Taluk in the said case.

(3) Correspondence ending with letter No. 120, dated the 12th December 1905, from the Government Advocate in Mysore, stating that the Chief Court in Criminal Appeal No. 90 of 1905-06, set aside the order of acquittal of three of the four accused persons and sentenced them to pay a fine of Rs. 2 each.

(4) The Judgment passed by the Chief Court in the above appeal :—

Thursday, the 23rd day of November 1905.

PRESENT.

Mr. Justice A. Rangasami Iyengar, Judge, and
Mr. Justice H. V. Nanjundayya, Judge.

Criminal Appeal No. 90 of 1905-06.

Appellant	*Vs.*	Respondents (accused 1, 2 and 3)
The Government of Mysore by Mr. S. Narayana Rao, Government Advocate.		1. Krishna Gowda. 2. Vasanta. 3. Subbe Gowda.

Appeal against the order of acquittal passed by the Amildar-Magistrate of Manjarabad Taluk in Criminal Case No. 98 of 1904-05.

This appeal coming on for hearing on Wednesday the 22nd day of November 1905, the Court pronounced the following—

Order.

* There is no proof that the accused placed the powder of the plant in water or that it is poisonous or otherwise deleterious. But the accused admit having fixed a basket for catching fish against the stream and lain watching near the place throughout the night. This comes under the prohibition against the setting of fixed engines for the capture or destruction of fish contained in Rule 4 (Notification 9007—Legis. 56, dated the 11th December 1901). We find the three accused persons, Krishna Gowda, Vasantha and Subbe Gowda, guilty under this provision and sentence them each to a fine of Rs. 2 under Section 8 of the Game and Fish Preservation Regulation.

No. J. 1882-91—*Cts.* 91-05-7, *dated Bangalore, 9th January* 1906.

ORDER THEREON.—Circulated among the Deputy Commissioners with a request that early and wide publicity be given to the judgment by circulars addressed to all patels and by *tom-tom* in the villages, as there is ground to believe that the mode of catching fish in the manner referred to in the judgment is practised generally by villagers and professional fishermen.

B. K. VENKATA VARADA IYENGAR,
Secy. to Govt., Gen. & Rev. Dept.